

State of Wisconsin
Department of Employee Trust Funds
DOA-3049 (R01/2000))
S. 51.01(5) Wis. Stats.; s. 111.32(13m) Wis. Stats.



Department of Employee Trust Funds
801 W. Badger Road
P. O. Box 7931
Madison, WI 53707-7931

Contract By Authorized Board

Commodity or Service: Compliance Audit Services For
Pharmacy Benefit Management (PBM)

Request for Proposal (RFP) No: ETJ0003
As modified or clarified in Amendment 5

dated February 2, 2018

Authorized Board:
Employee Trust Funds Board

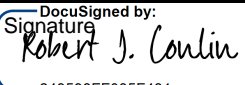
Contract Period: May 1, 2018 through April 30, 2020.

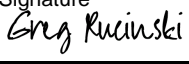
1. This Contract is entered into by and between the State of Wisconsin, Department of Employee Trust Funds (Department), the State of Wisconsin Employee Trust Funds Board (Board) and the Contractor whose name, address, and principal officer appears on page 2. The Department is the sole point of contact for Board contracting;
2. Whereby the Department agrees to direct the purchase and the Contractor agrees to supply the contract requirements cited in accordance with the terms and conditions of the RFP cited above, and in accordance with the Contractor's bid submitted on this RFP, which RFP and Contractor's bid are hereby made a part of this Contract;
3. In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employees or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
4. Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan. Contractors with an annual work force of less than fifty (50) employees are exempted from this requirement. Within fifteen (15) working days after the award of the Contract, the plan shall be submitted for approval to the Department. Technical assistance regarding this clause is provided by the Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931, 608.261.7952 or e-mail to ETFSMBProcurement@etf.wi.gov.
5. The Business Associate Agreement is incorporated as part of this Contract and will be amended from time to time as Federal and State regulations require.
6. Amendment 1 is created as part of this Contract to clarify information provided by the Contractor in the Contractor's proposal and bid.
7. Exhibit 1. – Time Line, is created as part of this Contract to reflect the proposed dates and frequency of audits to be performed by the Contractor, in accordance with Section C, 1.3, c. of the RFP. This Exhibit 1 provides for future audits with anticipated time periods and completion dates to be determined by mutual agreement.
8. For purposes of administering the Contract, the Order of Precedence is:
 - (a) The Contract; with TRICAST, Inc./PSRx Advisors;
 - (b) This Amendment 5, dated February 2, 2018;
 - (c) Amendment 4, dated October 6, 2015;
 - (d) Amendment 3, dated January 1, 2014;
 - (e) Amendment 2, dated August 20, 2010;
 - (f) Amendment 1, dated February 11, 2010
 - (g) Exhibit 1 – Time Line, dated February 11, 2010;
 - (h) Business Associate Agreement;
 - (i) RFP ETJ0003, dated August 24, 2009 (including all appendices and amendments);
 - (j) TRICAST, Inc./PSRx Advisors bid, dated October 7, 2009, in response to the RFP.
9. Amendment 2, dated August 20, 2010, is created as part of this Contract to document the agreed upon schedule of fee invoicing by TRICAST/PSRx for the contracted PBM compliance audit services.
10. Amendment 3, dated January 1, 2014, is created as part of this Contract to document the agreed upon inclusion of Contractor services to audit the Medicare Part D Employer Group Waiver Plan utilized by the State and Wisconsin Public Employer group health insurance programs. These services replace Contractor services previously agreed to for auditing the Retiree Drug Subsidy program.
11. Amendment 4, dated October 6, 2015, is created as part of this Contract to document the agreed upon extension of the original

term of this contract for one (1) two-year period beginning January 1, 2016, and running through April 30, 2018. Amendment 4 also provides the deliverables for the Phase 6 and Phase 7 audits to be conducted during this extended contract term with the final reports for Phase 7 due no later than April 30, 2018. All other Contract provisions remain unchanged and in effect.

12. Amendment 5 dated February 2, 2018, is created as part of this Contract to document the agreed upon extension of the original term of this contract for one (1) two-year period beginning May 1, 2018, and running through April 30, 2020. Amendment 5 replaces the Business Associate Agreement with the Department Terms and Conditions. Amendment 5 also provides the deliverables for the Phase 8 and Phase 9 audits to be conducted during this extended contract term with the final reports for Phase 9 due no later than April 30, 2020. This Amendment also provides the current name and tax identification number of the Contractor. All other Contract provisions remain unchanged and in effect.

Contract Number & Service: ETJ0003 - Compliance Audit Services For Pharmacy Benefit Management (PBM)
Amendment 5 – February 2, 2018

State of Wisconsin Department of Employee Trust Funds	
By Authorized Board (Name) Employee Trust Funds Board	
By (Name) Robert J. Conlin	
DocuSigned by: Signature  240609FF086F431...	
Title Secretary Wisconsin Department of Employee Trust Funds	
Phone 608.266.0301	
Date (MM/DD/CCYY) 2/2/2018	

To be Completed by Contractor
Legal Company Name TRICAST, LLC
Trade Name
Taxpayer Identification Number 47-4702246
Company Address (City, State, Zip) 10400 W Innovation Dr. #310 Milwaukee, WI 53226
By (Name) Greg Rucinski
DocuSigned by: Signature  DAEC3464DF984A7...
Title President
Phone 414.302.9733
Date (MM/DD/CCYY) 2/2/2018

February 11, 2010

Business Associate Agreement

State of Wisconsin
Department of Employee Trust Funds
BUSINESS ASSOCIATE AGREEMENT

incorporated into the Contract for

Compliance Audit Services For Pharmacy Benefit Management (PBM)

ETJ0003

This Business Associate Agreement ("Agreement") is by and between TRICAST, Inc., in partnership with PSRx Advisors, ("TRICAST") and the Wisconsin Department of Employee Trust Funds ("ETF"), and acting on behalf of the State of Wisconsin.

RECITALS:

WHEREAS, ETF and TRICAST have executed a contract, to provide auditing Services to ETF, pursuant to which TRICAST provides compliance audits of the Pharmacy Benefit Management plan ("Underlying Contract"), and in connection with those services ETF discloses or allows the disclosure to TRICAST of certain information that is subject to protection by the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 as passed as part of ARRA ("HITECH") and their implementing regulations, Title 45, Parts 160 through 164 of the Code of Federal Regulations, as well as by laws and administrative rules of the State of Wisconsin; and

WHEREAS, with respect to its activities pursuant to the Underlying Contract, TRICAST is ETF's Business Associate as that term is defined by HIPAA; and

WHEREAS, it is the intent of this Agreement to comply with state law and with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards in 45 C.F.R. Parts 160 to 164, inclusive,

WHEREAS, ETF and TRICAST agree to incorporate the terms of this Agreement into the Underlying Contract and agree to incorporate this Agreement into any associated addenda and contract extensions, in order to comply with HIPAA, HITECH and state law.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, ETF and TRICAST hereby agree as follows:

DEFINITIONS:

It is the intent of this Agreement to comply with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards, including the definitions in 45 C.F.R. Parts 160 to 164, inclusive, as applicable. This Agreement also addresses compliance with Wisconsin laws on confidentiality of personal information. In particular, the following words and phrases in this Agreement have the meanings set forth below, unless the context clearly requires otherwise:

"ARRA" means the American Recovery and Reinvestment Act of 2009.

"Individual Personal Information" has the meaning set forth in Wis. Admin. Code § ETF 10.70 (1).

"Medical Record" has the meaning set forth in Wis. Admin. Code § ETF 10.01 (3m).

"Personal Information" is information that can be used to identify a person and includes, without limitation, **Individually Identifiable Health Information, Individual Personal Information, Medical Records and Protected Health Information**; and includes information described in Wis. Stat., § 134.98.

"Third Party" means a party other than a subcontractor or agent that ETF has approved.

February 11, 2010

Business Associate Agreement

PART I – OBLIGATIONS OF TRICAST**A. Uses and Disclosures.**

TRICAST may use or disclose Personal Information it creates for or receives from ETF or any other Business Associate of ETF for only the following, limited purposes:

1. Permitted Uses and Disclosures of Personal Information. TRICAST is permitted to use and disclose Personal Information:
 - a. To conduct compliance audits of the Pharmacy Benefit Management plan for ETF in accordance with the Underlying Contract.
 - b. Subject to the limitations on Uses and Disclosures outlined in this Business Associate Agreement, specifically including the State Law Restrictions in Part I, Section B, TRICAST is authorized to use and disclose Personal Information as necessary for TRICAST's proper management and administration, to carry out TRICAST's legal responsibilities, and as otherwise Required by Law.
2. Prohibition on Unauthorized Use or Disclosure. TRICAST will not use or disclose Personal Information it creates for or receives from ETF or from another Business Associate of ETF, except as authorized or required by this Agreement or as Required by Law or as otherwise authorized in writing by ETF, including, without limitation, marketing and solicitation of business outside the Underlying Contract and disclosure of such information to third-parties.
3. Compliance with Regulations. TRICAST will comply with:
 - a. 45 C.F.R. Parts 160 to 164, inclusive, as applicable to a "Business Associate" of a "Covered Entity" and any other regulations adopted pursuant to HIPAA and HITECH; and
 - b. Applicable State Law not preempted by 45 C.F.R §§ 160.201 to 160.203, inclusive, or any other federal law.
4. State Law Restrictions. TRICAST shall comply with Wis. Stat. §§ 40.07 and 134.98 with respect to information TRICAST creates for or receives from ETF or from any other Business Associate of ETF. In particular:
 - a. Any Third Party request, including a subpoena, for disclosure of Personal Information, including, without limitation, Medical Records or Individually Identifiable Health Information, shall be referred to ETF in a timely manner; and
 - b. TRICAST shall not disclose to any Third Party Individual Personal Information which ETF itself may not disclose pursuant to Wis. Stat. § 40.07(1), or of Medical Records that ETF itself may not disclose pursuant to Wis. Stat. § 40.07(2).

B. Compliance with Standard Transactions.

1. Standard Transactions Conducted By TRICAST. If TRICAST conducts, in whole or in part, transactions, for or on behalf of ETF that are covered by 45 C.F.R Part 162, TRICAST will comply with the applicable HIPAA transactions standards, and will require any subcontractor or agent involved with the conduct of such transactions to provide reasonable assurances, evidenced by written contract, that it will comply with each applicable requirement of 45 CFR Part 162. Further, TRICAST will require that each of its subcontractors or agents provide assurances, by written contract, that it will not enter into a Trading Partner Agreement, in connection with its conduct of Standard Transactions for and on behalf of ETF that:
 - a. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
 - b. Adds any data element or segment to the maximum data set;
 - c. Uses any code or data element that either is not in the Standard Transaction's implementation specification or is marked "not used" by the Standard Transaction's implementation specifications;
 - d. Changes the meaning or intent of the Standard Transaction's implementation specifications; or
 - e. (v) Otherwise violates 45 CFR §162.915.

*February 11, 2010**Business Associate Agreement*

2. Communications Between the Parties. Communications between ETF and TRICAST that are required to meet HIPAA transactions standards will meet the standards set by 45 CFR Part 162. For all other communications, the forms, tape formats or electronic formats used shall be those mutually agreed upon by ETF and TRICAST.

C. Information Safeguards.

TRICAST will develop, implement, maintain and use reasonable and appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of Personal Information under the control of TRICAST, and to prevent intentional or unintentional non-permitted or violating use or disclosure of Protected Health Information. TRICAST will document and keep these safeguards current and furnish documentation of the safeguards to ETF upon request. These safeguards will comply with HIPAA, HITECH and their implementing regulations.

D. Reporting of Breach, Improper Use or Disclosure and Security Incidents.

TRICAST will report to ETF the discovery of any breach, use or disclosure of Personal Information, not allowed by this Agreement or in violation of 45 C.F.R. Part 164 or HITECH. An occurrence of a breach, improper use or disclosure or security incident is considered to be discovered as of the first day on which such occurrence is known to TRICAST, or, by exercising reasonable diligence, would have been known to TRICAST.

1. TRICAST shall provide notice to ETF of the occurrence. The notice shall include the identification of each individual whose unsecured Personal Information has been, or is reasonably believed by the Business Associate to have been accessed, acquired, or disclosed during such occurrence.
2. Within one business day of the discovery, TRICAST shall notify ETF's Privacy Officer. TRICAST shall immediately conduct an investigation and report in writing within four business days the following information:
 - a. The name and contact information of each individual whose Personal Information has been or is reasonably believed to have been accessed, acquired or disclosed during the occurrence.
 - b. A brief description of what happened, including the date of the occurrence and the date of the discovery of the occurrence, if known.
 - c. A description of the types of Personal Information that were involved in the occurrence (e.g., full name, date of birth, Social Security number, account number).
 - d. A brief description of what TRICAST is doing to investigate the occurrence, to mitigate losses and to protect against further occurrences.
 - e. The actions TRICAST has undertaken or will undertake to mitigate any harmful effect of the occurrence.
 - f. A corrective action plan that includes the steps TRICAST has taken or will take to prevent similar occurrences.
3. At ETF's option, TRICAST will be responsible for notifying individuals of the occurrence when ETF requires notification and will pay any cost of such notifications, as well as any costs associated with the breach, improper use or disclosure, including, without limitation, credit monitoring services. TRICAST must obtain ETF's approval of the time, manner and content of any such notifications, provide ETF with copies of the notifications, and provide the notifications within sixty (60) days after discovery of the breach, improper use or disclosure. TRICAST shall have the burden of demonstrating to ETF that all notifications were made as required, including any evidence demonstrating the necessity of any delay beyond the 60 day calendar notification to affected individuals after the discovery of the breach by ETF or TRICAST

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Business Associate Agreement

E. Duty to Mitigate Effect of Misuse or Unauthorized Disclosure and Notify Members of Unauthorized Acquisition:

1. TRICAST will mitigate, as required by HIPAA, HITECH, state law and this agreement, to the extent practicable, any harmful effect that is known to TRICAST of a breach, improper use or unauthorized disclosure reported pursuant to subsection D of this section.
2. TRICAST will comply with the provisions of Wis. Stat. §134.98 and any subsequently adopted state law regarding mitigation of privacy breaches, and shall ensure by written contract that any subcontractor or agent with whom it contracts to carry out the provisions of the Underlying Contract also complies with the provisions of Wis. Stat. §134.98 and any subsequently adopted law regarding mitigation of privacy breaches.

F. Minimum Necessary.

TRICAST will make reasonable efforts to use, disclose, or request only the minimum amount of Personal Information necessary to accomplish the intended purpose and shall comply with regulations issued pursuant to HIPAA and HITECH. Internal disclosure of such information to employees of TRICAST shall be limited only to those employees who need the information and only to the extent necessary to perform their responsibilities according to the UNDERLYING CONTRACT and this Agreement.

G. Disclosure to TRICAST's Subcontractors and Agents.

TRICAST shall require any of its agents or subcontractors to provide reasonable assurance, evidenced by written contract, that the agent or subcontractor will comply with the same privacy and security obligations as TRICAST with respect to such Personal Information. Before entering into such a contract with an agent or subcontractor, TRICAST shall obtain from ETF approval of the contract

H. Access, Amendment and Disclosure Accounting.

1. Access. At the direction of ETF, TRICAST agrees to provide access to any Protected Health Information held by TRICAST which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its access obligations under HIPAA and HITECH. All fees related to this access, as determined by TRICAST, are the responsibility of the individual requesting the access.
2. Amendment. At the direction of ETF, TRICAST agrees to amend or correct Protected Health Information held by TRICAST and which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its amendment obligations pursuant to HIPAA and HITECH. All fees related to this amendment, as determined by TRICAST, are the responsibility of the individual requesting the access.
3. Documentation of Disclosures. TRICAST agrees to document such disclosures of Protected Health Information and information related to such disclosures so that ETF may meet its obligations under HIPAA and HITECH
4. Accounting of Disclosures.
 - a. TRICAST shall maintain a process to provide ETF an accounting of disclosures of Protected Health Information for as long as TRICAST maintains Protected Health Information received from or on behalf of ETF. TRICAST agrees to provide to ETF or to an individual, in a time and manner designated by ETF, information collected in accordance with Subsection 3 above, to permit ETF to properly respond to a request by an individual for an accounting of disclosures pursuant to HIPAA and HITECH.
 - i. Each accounting will provide:
 - (a) The date of each disclosure;
 - (b) The name and address of the organization or person who received the Protected Health Information;
 - (c) A brief description of the Protected Health Information disclosed; and

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Business Associate Agreement

- (d) For disclosures other than those made at the request of the subject, the purpose for which the Protected Health Information was disclosed and a copy of the request or authorization for disclosure.
 - ii. For repetitive disclosures which TRICAST makes to the same person or entity, including ETF, for a single purpose, TRICAST may provide:
 - (a) The disclosure information for the first of these repetitive disclosures;
 - (b) The frequency or number of these repetitive disclosures; and
 - (c) The date of the last of these repetitive disclosures,
 - (d) TRICAST will make a log of this disclosure information available to ETF within five (5) business days of ETF's request.
- b. TRICAST need not record disclosure information or otherwise account for disclosures of Protected Health Information if:
 - i. The disclosures are allowed under this Agreement or are expressly authorized by ETF in another written document; and
 - ii. The disclosures are for one of the following purposes:
 - (a) Treatment, Payment or Health Care Operations that are not made through an Electronic Health Record;
 - (b) In response to a request from the Individual who is the subject of the disclosed Protected Health Information, or to that Individual's Personal Representative;
 - (c) Made to persons involved in the health care or payment for the health care of the Individual who is the subject of the disclosed Protected Health Information;
 - (d) For notification for disaster relief purposes;
 - (e) For national security or intelligence purposes;
 - (f) As part of a Limited Data Set; or
 - (g) To law enforcement officials or correctional institutions regarding inmates.
- 5. Disclosure Tracking Time Periods. Except as otherwise provided in this paragraph, TRICAST must have available to ETF the disclosure information required by this section, but in no case will TRICAST be required to have available information from:
 - a. More than six (6) years before ETF's request for the disclosure information; or
 - b. Any period during which TRICAST did not provide services to ETF.
- 6. Disclosure Tracking for Disclosures made through Electronic Health Records: TRICAST only needs to provide disclosures for Treatment, Payment or Health Care Operations made through an Electronic Health Record for three years prior to the date on which the accounting is requested. TRICAST shall provide all information necessary for ETF to provide an accounting that includes all information required by regulations issued pursuant to HIPAA and HITECH.
- 7. Effective Date: The effective date for accounting required under subsection 6 depends on the date ETF acquires an Electronic Health Record. If ETF had an electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF on or after January 1, 2014. If ETF does not have an Electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF after the later of January 1, 2011 or the date ETF acquires an Electronic Health Record.

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Business Associate Agreement

I. Accounting to ETF and Government Agencies.

TRICAST will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to ETF to provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining ETF's compliance with HIPAA and HITECH. TRICAST shall promptly notify ETF of any inquiries made to it by HHS concerning ETF's compliance with HIPAA.

J. Red Flag Rules.

If applicable to TRICAST, TRICAST shall be responsible for implementation of an Identity Theft Monitoring Policy and procedure to protect Personal Information under the Federal Trade Commission regulations known as the "Red Flag Rules".

PART II – ETF OBLIGATIONS**A. Changes in Permissions to Use and Disclose Protected Health Information.**

ETF shall promptly notify TRICAST of any change in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such change may affect TRICAST's use or disclosure of such Protected Health Information.

B. Changes in ETF's Notice of Privacy Practices.

ETF shall provide TRICAST with a copy of ETF's Notice of Privacy Practices and shall notify TRICAST of any change made to the Notice of Privacy Practices, to the extent that such change may affect TRICAST's efforts to comply with this Agreement.

C. Changes in State Law.

ETF shall notify TRICAST of any relevant change in Wisconsin law, to the extent that such change may affect TRICAST's efforts to comply with this Agreement.

PART III – TERM, TERMINATION AND AMENDMENT**A. Term.**

This Agreement becomes effective on the effective date of the Underlying Contract. The Agreement is co-extensive with the term of the Underlying Contract, including any extensions made to the original Underlying Contract.

B. Termination for Breach.

ETF shall have the right to terminate the Underlying Contract and this Agreement if TRICAST, by pattern or practice, materially breaches any provision of this Agreement.

C. Reasonable Steps to Cure Breach.

In addition to the right to terminate this Agreement and Underlying Contract pursuant to section B, above, ETF may provide TRICAST with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by ETF in its sole discretion, ETF may terminate the Underlying Contract and this Agreement, as soon as administratively feasible.

D. Effect of Termination: Return or Destruction of Protected Health Information.

Upon termination, cancellation, expiration, or other conclusion of the Agreement, TRICAST shall:

1. Return to ETF or, if return is not feasible, destroy all Personal Information in whatever form or medium that TRICAST received from or created on behalf of ETF. This provision shall also apply to all Personal Information that is in the possession of subcontractors or agents of TRICAST. In such case, TRICAST shall retain no copies of such information, including any compilations derived from and allowing identification of Personal Information. TRICAST shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, TRICAST shall certify on oath in writing to ETF that such return or destruction has been completed.

February 11, 2010

Business Associate Agreement

2. If TRICAST destroys Personal Information, it shall be done with the use of technology or methodology that renders the Personal Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance for the destruction of Protected Health Information. Acceptable methods for destroying Personal Information include: (i) paper, film, or other hard copy media shredded or destroyed in order that Personal Information cannot be read or reconstructed; and (ii) electronic media cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST). HHS specifically excluded redaction as a method of destruction of Protected Health Information, unless the information is properly redacted so as to be fully de-identified.
3. If TRICAST believes that the return or destruction of Personal Information is not feasible, TRICAST shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, TRICAST shall extend the protections of this Agreement to Personal Information received from or created on behalf of ETF, and limit further uses and disclosures of such Personal Information, for so long as TRICAST maintains the Personal Information.

E. Agreement to Amend Agreement.

The parties to this contract acknowledge that federal laws relating to transactions, security and privacy are rapidly evolving and that amendment to this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and their implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HITECH and applicable federal regulations. If this Agreement is not amended by the effective date of any final regulation or amendment to final regulations with respect to HIPAA and HITECH, this Agreement will automatically be amended on such effective date such that the obligations they impose on TRICAST remain in compliance with the regulations then in effect.

PART IV – GENERAL PROVISIONS

A. Conflict.

The provisions of this Agreement override and control any conflicting provision of the Underlying Contract. All non-conflicting provisions of the Underlying Contract remain in full force and effect.

B. Election to Not Treat As Representative.

Nothing in this Agreement shall be construed to limit the discretion of ETF, under 45 C.F.R. § 164.502 (g) (5), to elect not to treat a person as the representative of an individual.

C. No Third Party Beneficiaries.

Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any entity other than ETF and TRICAST, any rights, remedies, obligations or liabilities whatsoever.

D. Documentation.

All documentation that is required by this Agreement or by 45 C.F.R. Part 164 will be retained by TRICAST for six (6) years from the date of creation or when it was last in effect, whichever is longer.

E. Survival.

The parties' obligations and rights, with respect to TRICAST's engagement to provide services, will be unaffected by the termination of the Underlying Contract and this Agreement. In particular, the provisions of Part III, Sections D and E, and this section, shall survive termination of the Underlying Contract and this Agreement.

February 11, 2010

Amendment 1

State of Wisconsin
Department of Employee Trust Funds
AMENDMENT 1
to the Contract for
Compliance Audit Services For Pharmacy Benefit Management (PBM)
ETJ0003

The parties to this contract agree to the following:

1. Biennial (every two years) audits will be conducted by the Contractor as identified in Exhibit 1 of this contract, and will cover the pharmacy benefit management and RDS program services provided by the PBM contracted with the State of Wisconsin Group Insurance Board.
2. On-site visits to the PBM's location may be required of the Contractor when performing the audit.
3. Vendor will inform the Department of any changes in key staff assigned under this contract as identified in Section B., Part 1.0, Item 1.3, of the contractor's proposal in response to this RFP ETJ0003.
4. Progress reporting intervals and form, as identified in Section C., Part 4.0, Item 4.4 of this RFP ETJ0003 will be determined and mutually agreed to by the Contractor and the Department at the entrance conference.
5. Draft and Final reports will be provided to the Department on a date determined and mutually agreed to by the Contractor and the Department at the entrance conference.

February 11, 2010

Exhibit 1

**State of Wisconsin
Department of Employee Trust Funds**

EXHIBIT 1

to the Contract for

Compliance Audit Services For Pharmacy Benefit Management (PBM)

ETJ0003

SCHEDULE OF BIENNIAL AUDITS

Audit	Proposed Audit Start and Completion Dates		Plan Years Audited	
	Start no later than:	Completed no later than:	Pharmacy Benefit Management	Retiree Drug Subsidy Program
Initial	To Be Determined by Mutual Agreement	September 30, 2010	2007 + 2008	2006 + 2007
Second	March 31, 2011	September 30, 2011	2009 + 2010	2008 + 2009
Third	March 31, 2013	September 30, 2013	2011 + 2012	2010 + 2011

The dates proposed for the Initial Audit indicated above will be mutually agreed upon by all parties based on both the Department's and the Contractor's readiness to initiate and conduct the audit.

August 20, 2010

Amendment 2

State of Wisconsin
Department of Employee Trust Funds
AMENDMENT 2
to the Contract for
Compliance Audit Services For Pharmacy Benefit Management (PBM)
ETJ0003

The parties to this contract agree to the following:

The Contractor will invoice the Department for the fees associated with performance of the contracted Compliance Audit Services For Pharmacy benefit Management based on the following schedule of completed milestones:

ETF Project Milestone Schedule	%	Fee Component
1. Pharmacy Data Load	10%	\$ 7,625.00
2. Forensic Report Delivery	15%	\$ 11,437.50
3. Onsite Review of Rebates and Pharmacy Network Contracts	15%	\$ 11,437.50
4. Delivery of Preliminary report (RDS and Standard)	25%	\$ 19,062.50
5. Delivery of Final Report (RDS and Standard)	35%	\$ 26,687.50
TOTAL	100%	\$ 76,250.00

Invoices will be generated upon completion of each milestone and provided directly to the Department for payment.

Invoices will be made out to:

ACCOUNTS PAYABLE
DEPT OF EMPLOYEE TRUST FUNDS
PO BOX 7931
MADISON WI 53707-7931

State of Wisconsin
Department of Employee Trust Funds
AMENDMENT 3
to the Contract for
Compliance Audit Services For Pharmacy Benefit Management (PBM)
ETJ0003

The parties to this contract agree to the following addition to the Statement of Work (SOW) currently being performed by Contractor:

Employer Group Waiver Plan (EGWP) Audit; Prescription Drug Event (PDE) Oversight.
Beginning with the 2012-2013 Plan Years.

I. EGWP Audit

For Plan Year 2012, the Department commenced an Employer Group Waiver Plan (EGWP) under a separate contract with Navitus and its Medicare Part D contract licensee Sterling Health Plans for the State and Wisconsin Public Employer (WPE) group health insurance plans.

Under this arrangement Medicare enrolled retirees participate in the Medicare Part D prescription drug benefit program through the State and WPE benefit plans. In order to accomplish this audit, additional steps are required.

Contractor (TRICAST/PSRx) will review 100% of the pharmacy (source claims) and PDE data claims processed during the specified project timeline. The TRICAST/PSRx audit process conducted by Contractor shall assess appropriate calculations and various conditions, including:

- Reviewing 100% of pharmacy source claim files;
- Matching source claim files to the PDE record;
- Analyzing claim pricing and plan design specifics to ensure that PDE records have been accurately and appropriately generated;
- Loading PDE response files, MMR files, and TRR files into the PSRx proprietary audit system for evaluation and recalculation;
- Reviewing True Out Of Pocket (TrOOP) calculations;
- Analyzing formulary match;
- Reviewing Low Income Cost Sharing (LICS) subsidy levels and calculations;
- Reviewing GAP Discounts; and,

II. Assumptions

The Department will work with Contractor to ensure Contractor is provided with the appropriate transaction sets and the most recent PDE file for the corresponding claim pricing and plan design audit plan year, in order to properly perform the audit.

PDE reporting period will be annual; January 1 through December 31.

III. Deliverables

Audit will be completed by Contractor fifteen (15) weeks from the receipt of the most recently submitted PDE file.

Contractor will review 100% of the pharmacy and PDE claims processed during the specified project milestone timeline, and will deliver an Annual Report of their audit findings to the Department.

Fees invoiced by Contractor for the contracted PBM Audit Project are as follows:

Phase 4 ETF Project Milestone Schedule

Start Date 3/31/2014 / End Date 9/30/2014

1. EGWP Program 2012 and 2013
2. Pricing and Plan Design Audit 2013 Retrospective and 2014 Ongoing
3. Pharmacy Network Audit 2012 and 2013
4. Rebate Audit 4th Quarter 2013

Total Annual Fee \$84,500; Billed in quarterly installments of \$21,125.

Phase 5 ETF Project Milestone Schedule

Start Date 3/31/2015 / End Date 9/30/2015

1. EGWP Program 2014
2. Pricing and Plan Design Audit 2015 Ongoing
3. Pharmacy Network Audit 2014
4. Rebate Audit 4th Quarter 2014

Total Annual Fee \$84,500; Billed quarterly installments of \$21,125.

Schedule for Phase 4 and 5 audits:

Audit Phase	Start No Later Than	Completed No Later Than	PBM*	Manufacturer Rebate Audit	Pharmacy Network Audit**	EGWP
4	3/31/14	9/30/14	1/1 – 12/31/13 2014 ONGOING	4 th Quarter 2013	1/1 – 12/31/12 1/1 – 12/31/13	1/1 – 12/31/12 1/1 – 12/31/13
5	3/31/15	9/30/15	2015 ONGOING	4 th Quarter 2014	1/1 – 12/31/14	1/1 – 12/31/14

* Pricing & Plan Design

** Top 10 independent & Top 10 chain pharmacies

State of Wisconsin
Department of Employee Trust Funds
AMENDMENT 4
to the Contract for
Compliance Audit Services For Pharmacy Benefit Management (PBM)
ETJ0003

The parties to this contract agree to the following:

Extension of the original term of this contract for one (1), two-year period beginning January 1, 2016, and running through December 31, 2017, and any deliverables specifically associated with the extension of the contract term.

I. Contract Term Extension

The original provisions of this contract provided an initial term to run from January 1, 2010, through December 31, 2015. At the end of the initial term the Department, on behalf of the Board, and the Contractor have the option to exercise the first of two (2) available two-year contract term extensions. The Board and the Contractor agree to extend the term of this contract to run through audit years 2016 and 2017 with final audit reports due no later than April 30, 2018.

II. Execution of Contract.

This Amendment to the Contract between the Contractor, the Department and the Board shall be effective January 1, 2016, when the updated Contract document is signed by authorized representatives for each party hereto. By their signature, each signatory represents that he or she has proper and legal authority to sign and bind their principal and that each party has all required legal right and power to perform all acts called for by the Contract in the State of Wisconsin and elsewhere.

All provisions of the Contract, except those specifically annotated in this amendment, remain in full force and effect unless otherwise agreed to by all parties in a future amendment. All terms defined in previous versions and amendments of the Contract will hold the same meaning in this, Amendment 4.

III. Deliverables

Audit will be completed by Contractor fifteen (15) weeks from the receipt of the most recently submitted PDE file.

Contractor will review 100% of the pharmacy and PDE claims processed during the specified project milestone timeline, including those claims associated with the High Deductible Health Plan (HDHP), and will deliver an Annual Report of their audit findings to the Department. To ensure copays and accumulators associated with the HDHP are functioning in accordance with the benefit design, the Contractor will perform a manual review of a claims file provided by the PBM that shows when medical dollars were added to the accumulators.

Fees invoiced by Contractor for the contracted PBM Audit Project are as follows:

Phase 6 ETF Project Milestone Schedule

Start Date 3/31/2016 / End Date 9/30/2016

1. EGWP Program 2015
2. Pricing and Plan Design Audit 2016 Ongoing
3. Pharmacy Network Audit 2015
4. Rebate Audit 4th Quarter 2015

Total Annual Fee \$84,500; Billed in quarterly installments of \$21,125.

Phase 7 ETF Project Milestone Schedule

Start Date 3/31/2017 / End Date 9/30/2017

1. EGWP Program 2016
2. Pricing and Plan Design Audit 2017 Ongoing
3. Pharmacy Network Audit 2016
4. Rebate Audit 4th Quarter 2016

Total Annual Fee \$84,500; Billed quarterly installments of \$21,125.

Schedule for Phase 6 and 7 audits:

Audit Phase	Start No Later Than	Completed No Later Than*	PBM Pricing & Plan Design	Manufacturer Rebate Audit	Pharmacy Network Audit**	EGWP
6	3/31/16	9/30/16	2016 ONGOING	4 th Quarter 2015	1/1/15 – 12/31/15	1/1/15 – 12/31/15
7	3/31/17	9/30/17	2017 ONGOING	4 th Quarter 2016	1/1/16 – 12/31/16	1/1/16 – 12/31/16

* Applies to retrospective audits only. Concurrent or ongoing audits must be completed by April 30th of the year following the plan year being audited.

** Top 10 independent & Top 10 chain pharmacies

State of Wisconsin
Department of Employee Trust Funds
AMENDMENT 5
to the Contract for
Compliance Audit Services For Pharmacy Benefit Management (PBM)
ETJ0003

The parties to this contract agree to the following:

Extension of the original term of this contract, and the previous two-year extension exercised in Amendment 4, for one (1), two-year period beginning May 1, 2018, and running through April 30, 2020, and any deliverables agreed to by the parties specifically associated with the extension of the contract term.

I. Contract Term Extension

The Department, on behalf of the Board, and the Contractor agree to extend the term of this contract to run through the audit of plan years 2017, 2018 and 2019, as specified in Section III. Deliverables, with final audit reports are due no later than April 30, 2020.

II. Execution of Contract.

- A. This Amendment to the Contract between the Contractor and the Department, on behalf of the Board, shall be effective May 1, 2018, when the updated Contract document is signed by authorized representatives for each party hereto. By their signature, each signatory represents that he or she has proper and legal authority to sign and bind their principal and that each party has all required legal right and power to perform all acts called for by the Contract in the State of Wisconsin and elsewhere.
- B. All provisions of the Contract, except those specifically annotated in this amendment, remain in full force and effect unless otherwise agreed to by all parties in a future amendment. All terms defined in previous versions and amendments of the Contract will hold the same meaning in this, Amendment 5.

III. Deliverables

- A. The EGWP Audit will be completed by Contractor fifteen (15) weeks from the receipt of the most recently submitted PDE file provided by the PBM for the given Plan Year being Audited.
- B. Contractor will review 100% of the pharmacy and PDE claims processed during the specified project milestone timeline, including those claims associated with the High Deductible Health Plan (HDHP)
- C. Contractor will deliver an Annual Report of their audit findings to the Department to include at a minimum and as agreed to by the parties:
 - 1. An executive summary of audit findings
 - 2. A full report of audit findings
 - 3. All detailed documentation that supports each segment of the reported audit findings

D. Communications between the Contractor and the Department

1. The Contractor and the Department will conduct an official kick-off meeting prior to the start of a new plan year audit phase.
2. The Contractor and the Department will conduct regularly scheduled check-in sessions to review audit status that will occur no less frequently than every two months.

E. Fees invoiced by Contractor for the contracted PBM Audit Project and audit phase milestones are as follows:

1. Phase 8 ETF Project Schedule and Fees

- a) Start Date no later than 5/1/2018
- b) End Date no later than 9/30/2018
- c) Rebate Audit Reporting no later than 4/30/2019
- d) Audit Segments:
 - (1) EGWP Program 2017
 - (2) Pricing and Plan Design Audit 2018 (ongoing), including:
 - a. Pricing (Rebates & Discounts) Guarantees Audit
 - b. Accumulator File Audit
 - (3) Pharmacy Network Audit 2017
 - (4) Rebate Audit 4th Quarter 2017
 - (5) Claims-To-Invoice Audit 2017
 - (6) Operation Review Audit 2017
- e) Total Annual Fee of \$98,500 will be billed in quarterly installments of \$24,625, based on the following fee payment schedule:

Quarter	Amount	Invoice Date	Payment Due Date
1	\$24,625	March 1, 2018	March 31, 2018
2	\$24,625	June 1, 2018	June 30, 2018
3	\$24,625	September 1, 2018	September 30, 2018
4	\$24,625	December 1, 2018	December 31, 2018

2. Phase 9 ETF Project Schedule and Fees

- a) Start Date no later than 5/1/2019
- b) End Date no later than 9/30/2019
- c) Rebate Audit Reporting no later than 4/30/2020
- d) Audit Segments:
 - (1) EGWP Program 2018
 - (2) Pricing and Plan Design Audit 2019 (ongoing), including:
 - a. Pricing (Rebates & Discounts) Guarantees Audit
 - b. Accumulator File Audit
 - (3) Pharmacy Network Audit 2018
 - (4) Rebate Audit 4th Quarter 2018
 - (5) Claims-To-Invoice Audit 2018
 - (6) Operation Review Audit 2018
- e) Total Annual Fee of \$98,500 will be billed in quarterly installments of \$24,625, based on the following fee payment schedule:

Quarter	Amount	Invoice Date	Payment Due Date
1	\$24,625	March 1, 2019	March 31, 2019
2	\$24,625	June 1, 2019	June 30, 2019
3	\$24,625	September 1, 2019	September 30, 2019
4	\$24,625	December 1, 2019	December 31, 2019

F. Pricing Guarantees Audit Segment

1. To aid the Department in determining whether pricing guarantees have been met, the Contractor will perform an audit of pricing guarantees that were agreed to by the PBM and the Department.
2. Pricing guarantees to be audited are associated with drug manufacturer rebates and drug pricing discounts.

G. Accumulator File Audit Segment

1. To ensure copays and accumulators associated with the HDHP are functioning in accordance with the benefit design, the Contractor will perform an audit of accumulator claims files provided by the PBM that shows when accumulators were credited with medical dollars and out-of-pocket limits (OOPs) were applied.
2. Contractor will also perform an audit of the accumulator files to check for compliance with Federal maximum out-of-pocket (MOOP) accumulations.

H. Contract Audit Segment Sampling Focus

1. Network Pharmacies – Contractor will audit the following network pharmacy contracts:
 - a) Top seven (7) chain pharmacies based on cost.
 - b) Top seven (7) chain pharmacies based on utilization.
 - c) Top seven (7) independent pharmacies based on cost.
 - d) Top seven (7) independent pharmacies based on utilization.
 - e) Eight (8) pharmacies that do not fall into one of the four categories above, selected by the Contractor, from a pool of pharmacies established by a review of cost and utilization trends, and as agreed to by the Department and the Contractor.
2. Manufacturer Rebates – Contractor will audit the following drug manufacturer rebate contracts:
 - a) Top three (3) drug manufacturer rebate contracts providing the greatest amount of rebate dollars for the commercial (non-Medicare) programs.
 - b) Top three (3) drug manufacturer rebate contracts providing the greatest amount of rebate dollars for the EGWP (Medicare) program.
 - c) Three (3) drug manufacturers that do not fall into one of the two categories above, selected by the Contractor, and as agreed to by the Department and the Contractor.

I. Claims-To-Invoice Audit Segment

1. Contractor will perform an audit of the accounting of invoices paid by the Department and the specific claims associated with the PBM's invoice.
2. The Contractor and the Department will mutually determine how invoices will be provided to the Contractor for this audit segment.

J. Operation Review Audit Segment

1. Contractor will perform an audit of the PBM's internal policies and procedures, and review actual customer service results.
2. Contractor will report on PBM's ability to meet contractual performance standards and guarantees in a format agreed to by the Department and the Contractor.

Department Terms and Conditions

- 1.0 ENTIRE AGREEMENT:** This Contract, its exhibits, subsequent amendments and the documents incorporated by order of precedence contain the entire understanding between the parties on the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. This Contract supersedes any other oral or written agreement entered into between the parties on the subject matter hereof.

This Contract may be amended at any time by written mutual agreement, but any such amendment shall be without prejudice to any claim arising prior to the date of the change. No one, except duly authorized officers or agents of the Contractor and the Department, shall alter or amend this Contract. No change in this Contract shall be valid unless evidenced by an amendment that is signed by such officers of the Contractor and the Department.

- 2.0 COMPLIANCE WITH THE CONTRACT AND APPLICABLE LAW:** In the event of a conflict between this Contract and any applicable federal or state statute, administrative rule, or regulation; the statute, rule, or regulation will control.

In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against employees or applicants for employment because of age, race, religion, creed, color, handicap, physical condition, developmental disability as defined in Wis. Stat. § 51.01 (5); marital status, sex, sexual orientation, national origin, ancestry, arrest record, conviction record; or membership in the national guard, state defense force, or any reserve component of the military forces of the United States or this state.

The Contractor shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA) of 1990. Evidence of compliance with ADA shall be made available to the Department upon request.

The Contractor acknowledges that Wis. Stat. § 40.07 specifically exempts information related to individuals in the records of the Department of Employee Trust Funds from the Wisconsin Public Records Law. Contractor shall treat any such records provided to or accessed by Contractor as non-public records as set forth in Wis. Stat. § 40.07.

Contractor will comply with the provisions of Wis. Stat. § 134.98.

- 3.0 LEGAL RELATIONS:** The Contractor shall at all times comply with and observe all federal and State laws, local laws, ordinances, and regulations which are in effect during the period of this Contract and which in any manner affect the work or its conduct. This includes but is not limited to laws regarding compensation, hours of work, conditions of employment and equal opportunities for employment.

In carrying out any provisions of this Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability upon the Department, it being understood that in such matters that the Department acts as an agent of the State.

The Contractor accepts full liability and agrees to hold harmless the State, the Department's governing boards, the Department, its employees, agents and contractors for any act or omission of the Contractor, or any of its employees, in connection with this Contract.

No employee of the Contractor may represent himself or herself as an employee of the Department or the State.

- 4.0 CONTRACTOR:** The Contractor will be the sole point of contact with regard to contractual matters, including the performance of Services and the payment of any and all charges resulting from contractual obligations.

None of the Services to be provided by the Contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior written notification to, and approval of, the Department.

After execution of the Contract, ETF will provide a designated contact person and commit to a timely approval process for notification of a change in subcontractor(s) and/or delegated services.

The Contractor shall be solely responsible for its actions and those of its agents, employees or subcontractors under this Contract. The Contractor will be responsible for Contract performance when subcontractors are used. Subcontractors must abide by all terms and conditions of this Contract.

Neither the Contractor nor any of the foregoing parties has the authority to act or speak on behalf of the State of Wisconsin.

The Contractor will be responsible for payment of any losses by subcontractors or agents.

Any notice required or permitted to be given shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by the United States Postal Service, certified or registered mail-receipt requested. In the event the Contractor moves or updates contact information, the Contractor shall inform the Department of such changes in writing within ten (10) Business Days. The Department shall not be held responsible for payments delayed due to the Contractor's failure to provide such notice.

- 5.0 CONTRACTOR PERFORMANCE:** Work under this Contract shall be performed in a timely, professional and diligent manner by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally-recognized organizations establishing quality standards for the work of the type to be performed hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its employees or its subcontractors perform the Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal and Contract requirements.

Without limiting the foregoing, the Contractor shall control the manner and means of the Services so as to perform the work in a reasonably safe manner and comply fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Contract shall govern.

The Contractor shall provide the Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the Department's satisfaction; the Department's decision in that regard shall be final and conclusive.

All Contractor's Services under this Contract shall be performed in material compliance with the applicable federal and state laws and regulations in effect at the time of performance, except when imposition of a newly enacted or revised law or regulation would result in an unconstitutional impairment of this Contract.

The Contractor will make commercially reasonable efforts to ensure that Contractor's professional and managerial staff maintain a working knowledge and understanding of all federal and state laws, regulations, and administrative code appropriate for the performance of their respective duties, as well as contemplated changes in such law which affect or may affect the Service under this Contract.

The Contractor shall maintain a written contingency plan describing in detail how it will continue operations and Services under the Contract in certain events including, but not limited to, strike and disaster, and shall submit it to the Department upon request.

- 6.0 AUDIT PROVISION:** The Contractor and its authorized subcontractors are subject to audits by the State of Wisconsin, the Legislative Audit Bureau (LAB), an independent Certified Public Accountant (CPA), or other representatives as authorized by the State of Wisconsin. The Contractor will cooperate with such efforts and provide all requested information permitted under the law.

Authorized personnel shall have access to interview any Contractor's or subcontractor's employee or authorized agent involved with this Contract in conjunction with any audit, review, or investigation deemed necessary by the State of Wisconsin.

- 7.0 CRIMINAL BACKGROUND VERIFICATION:** The Department follows the provisions in the Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks (see <http://doa.wi.gov/Documents/DPM/Document%20Library/Chap246VerifyingApplicantInfoSecuringBackgroundChecks.pdf>). The Contractor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other State justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the Contractor's background check procedures should be provided to the Department regarding the measures used by the Contractor to protect the security and privacy of program data and participant information. A copy of the result of the criminal background check the Contractor conducted must be made available to the Department upon request. The Department reserves the right to conduct its own criminal background checks on any or all employees or subcontractors of and referred by the Contractor for the delivery or provision of Services.

- 8.0 COMPLIANCE WITH ON-SITE PARTY RULES AND REGULATIONS:** Contractor and the State of Wisconsin agree that their employees, while working at or visiting the premises of the other party, shall comply with all internal rules and regulations of the other party, including security procedures, and all applicable federal, state, and local laws and regulations applicable to the location where said employees are working or visiting.

The Department is responsible for allocating building and equipment access, as well as any other necessary Services available from the Department that may be used by the Contractor. Any use of the Department facilities, equipment, internet access, and/or services shall only be for project purposes as authorized by the Department. The

Contractor will provide its own personal computers, which must comply with the Department security policies before connection to the Department's local computer network.

- 9.0 SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL:** The State of Wisconsin shall have the right, acting by itself or through its authorized representatives, to enter the premises of the Contractor at mutually agreeable times to inspect and copy the records of the Contractor and the Contractor's compliance with this section. In the course of performing Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to the State.

The Contractor shall be responsible for damage to the State's equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Contractor, contracted personnel, or subcontractors, and shall reimburse the State accordingly upon demand. This remedy shall be in addition to any other remedies available to the State by law or in equity.

- 10.0 BREACH NOT WAIVER:** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of default, evidence of proper Contractor performance, or acceptance of any defective item or Services furnished by the Contractor.

- 11.0 SEVERABILITY:** The provisions of this Contract shall be deemed severable and the unenforceability of any one or more provisions shall not affect the enforceability of any of the other provisions. If any provision of this Contract, for any reason, is declared to be invalid, unenforceable, or illegal, the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

- 12.0 LIQUIDATED DAMAGES:** The Contractor and Department acknowledge that it can be difficult to ascertain actual damages when a Contractor fails to carry out the responsibilities of this Contract. Because of that, the Contractor and Department will negotiate liquidated damages, as required by the State of Wisconsin, for this Contract. The Contractor agrees that the Department shall have the right to liquidate such damages, through deduction from the Contractor's invoices, in the amount equal to the damages incurred, or by direct billing to the Contractor.

The Department shall notify the Contractor in writing of any claim for liquidated damages pursuant to this section within thirty (30) Calendar Days after the Contractor's failure to perform in accordance with the terms and conditions of this Contract.

Notwithstanding the foregoing language, when necessary the Department will identify in the RFP specific financial penalties for failure of the Contractor to meet performance standards and guarantees that may be set forth in the RFP.

- 13.0 CONTRACT DISPUTE RESOLUTION:** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, except for breach of Contractor's intellectual property rights, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for and adjustment to such provision.

Contractor shall continue without delay to carry out all its responsibilities under this Contract which are not affected by the dispute. Should Contractor fail to perform its responsibilities under this Contract that are not affected by the dispute without delay, any and all additional costs incurred by Contractor and ETF as a result of such failure to proceed shall be borne by Contractor and Contractor shall not make any claim against ETF for such costs. ETF's non-payment of fees in breach of this Contract that are overdue by sixty (60) days is a dispute that will always be considered to affect Contractor's responsibilities.

No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the Department, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

The party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by delivering written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Contract. After such notice, the parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient

times and places, between authorized negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below which to attempt to resolve the dispute:

Level	Contractor	The Department	Allotted Time
First	Level 1 entity	Deputy Office Director	10 Business Days
Second	Level 2 entity	Office Director	20 Business Days
Third	Level 3 entity	Secretary	30 Business Days

The allotted time for the First Level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the Invoking Party's notice was originally received by the other party. If the Third Level parties cannot resolve the issue within thirty (30) business days of the Invoking Party's original notice, then the issue shall be designated as a dispute at the discretion of the Invoking Party and, if so, shall be resolved in accordance with the section below. The time periods herein are in addition to those periods for a party to cure provided elsewhere in this Contract, and do not apply to claims for equitable relief (e.g., injunction to prevent disclosure of Confidential Information). The Department may withhold payments on disputed items pending resolution of the dispute.

14.0 CONTROLLING LAW: All questions as to the execution, validity, interpretation, construction and performance of this Contract shall be construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of laws or choice of law principles. Any court proceeding arising or related to this Contract or a party's obligations hereunder shall be exclusively brought and exclusively maintained in the State of Wisconsin, Dane County Circuit Court, or in the District Court of the United States Western District (if jurisdiction is proper in federal court), or upon appeal to the appellate courts of corresponding jurisdiction, and Contractor hereby consents to the exclusive jurisdiction and exclusive venue therein and waives any right to object to such jurisdiction or venue. To the extent that in any jurisdiction Contractor may now or hereafter be entitled to claim for itself or its assets immunity from suit, execution, attachment (before or after judgment) or other legal process, Contractor, to the extent it may effectively do so, irrevocably agrees not to claim, and it hereby waives, the same.

15.0 RIGHT TO SUSPEND OPERATIONS: If, at any time during the period of this Contract, the Department determines that the best interest of the Department or its governing boards would be best served by the Contractor's temporarily holding of all Services, the Department will promptly notify the Contractor. Upon receipt of such notice, the Contractor shall suspend all Services.

16.0 TERMINATION OF THIS CONTRACT: The Department may terminate this Contract at any time at its sole discretion by delivering one-hundred eighty (180) Calendar Days written notice to the Contractor.

Upon termination, the Department's liability shall be limited to the prorated cost of the Services performed as of the date of termination plus expenses incurred with the prior written approval of the Department.

If the Contractor terminates this Contract, it shall refund all payments made hereunder by the Department to the Contractor for work not completed or not accepted by the Department. Such termination shall require written notice to that effect to be delivered by the Contractor to the Department not less than one-hundred eighty (180) Calendar Days prior to said termination.

Upon any termination of this Contract, the Contractor shall perform the Services specified in a transition plan if so requested by the Department; provided, however, that except as expressly set forth otherwise herein, the Contractor shall not be obligated to perform such Services unless all amounts due to the Contractor under this Contract, including payment for the transition Services, have been paid. Failure of the Contractor to comply with a transition plan upon request and upon payment shall constitute a separate breach for which the Contractor shall be liable.

Upon the expiration or termination for any reason, each party shall be released from all obligations to the other arising after the expiration date or termination date, except for those that by their terms survive such termination or expiration.

17.0 TERMINATION FOR CAUSE: If the Contractor fails to perform any material requirement of this Contract, breaches any material requirement of this Contract, or if the Contractor's full and satisfactory performance of this Contract is substantially endangered, the Department may terminate this Contract. Before terminating this Contract, the Department shall give written notice of its intent to terminate to Contractor after a thirty (30) Day written notice and cure period.

The State of Wisconsin reserves the right to cancel this Contract in whole or in part without penalty in one (1) or more of the following occurrences:

1. If the Contractor intentionally furnished any statement, representation, warranty, or certification in connection with its Proposal which is materially false, incorrect, or incomplete;
2. If applicable, fails to follow the sales and use tax certification requirements of Wis. Stat. § 77.66;
3. Incurs a delinquent Wisconsin tax liability;

4. Fails to submit a non-discrimination or affirmative action plan per the requirements of Wis. Stat. § 16.765 and Wisconsin's Fair Employment Law, subch. II, Chapter 111 of the Wisconsin Statutes as required herein;
5. Is presently identified on the list of parties excluded from State of Wisconsin procurement and non-procurement Contracts;
6. Becomes a state or federal debarred Contractor, or becomes excluded from state Contracts, or;
7. Fails to maintain and keep in force all required insurance, permits and licenses as required per this Contract;
8. Fails to maintain the confidentiality of the State of Wisconsin's information that is considered to be Confidential Information or Protected Health Information;
9. Files a petition in bankruptcy, become insolvent, or otherwise takes action to dissolve as a legal entity; or,
10. If at any time the Contractor's performance threatens the health or safety of a State of Wisconsin employee, citizen, or customer.
11. Violation of any requirements in Section 22 regarding Confidential Information.

In the event of a termination for cause by the State of Wisconsin, the State of Wisconsin shall be liable for payments for any work accepted by the State of Wisconsin prior to the date of termination.

18.0 REMEDIES OF THE STATE: The State of Wisconsin shall be free to invoke any and all remedies permitted under Wisconsin law. In particular, if the Contractor fails to perform as specified in this Contract, the State of Wisconsin may issue a written notice of default providing for at least a seven (7) Business Day period in which the Contractor shall have an opportunity to cure, provided that cure is possible, feasible, and approved in writing by the State of Wisconsin. Time allowed for cure of a default shall not diminish or eliminate the Contractor's liability. If the default remains, after opportunity to cure, then the State of Wisconsin may: (1) exercise any remedy provided in law or in equity or (2) terminate Contractor's Services.

If the Contractor fails to remedy any delay or other problem in its performance of this Contract after receiving reasonable notice from the State of Wisconsin to do so, the Contractor shall reimburse the State of Wisconsin for all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction.

In case of failure to deliver Services in accordance with or Services from other sources as necessary, Contractor shall be responsible for the additional cost, including purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to the State of Wisconsin.

19.0 TRANSITIONAL SERVICES: Upon cancellation, termination, or expiration of this Contract for any reason, the Contractor shall provide reasonable cooperation, assistance and Services, and shall assist the State of Wisconsin to facilitate the orderly transition of the work hereunder to the State of Wisconsin and or to an alternative Contractor selected for the transition upon written notice to the Contractor at least thirty (30) business days prior to termination or cancellation, and subject to the terms and conditions set forth herein.

20.0 ADDITIONAL INSURANCE RESPONSIBILITY: The Contractor shall exercise due diligence in providing Services under this Contract. In order to protect the Board's governing the Department and any Department employee against liability, cost, or expenses (including reasonable attorney fees) which may be incurred or sustained as a result of Contractor's errors or other failure to comply with the terms of this Contract, the selected Contractor shall maintain errors and omissions insurance including coverage for network and privacy risks, breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of **\$1,000,000** per claim and **\$5,000,000** aggregate in force during this Contract period and for a period of three (3) years thereafter for Services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Employee Trust Funds and its affiliated boards as additional insured parties. The Department reserves the right to require higher or lower limits where warranted.

21.0 OWNERSHIP OF MATERIALS: Except as otherwise provided in subsection (t) of Section 22, all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of Services under this Contract shall be furnished to the Contractor and shall be returned to the Department upon completion of this Contract. The Contractor shall not use it for any purpose other than carrying out the work described in this Contract.

The Department will be furnished without additional charge all data, models, information, reports, and other materials associated with and generated under this Contract by the Contractor.

The Department shall solely own all customized software, documents, and other materials developed under this Contract. Use of such software, documents, and materials by the Contractor shall only be with the prior written approval of the Department.

This Contract shall in no way affect or limit the Department's rights to use, disclose or duplicate, for any purpose whatsoever, all information and data pertaining to the Department or covered individuals and generated by the claims administration and other Services provided by Contractor under this Contract.

All files (paper or electronic) containing any Wisconsin claimant or employee information and all records created and maintained in the course of the work specified by this Contract are the sole and exclusive property of the Department. Contractor may maintain copies of such files during the term of this Contract as may be necessary or appropriate for its performance of this Contract. Moreover, Contractor may maintain copies of such files after the term of this Contract (i) for one hundred twenty (120) days after termination, after which all such files shall be transferred to the Department or destroyed by Contractor, except for any files as to which a claim has been made, and (ii) for an unlimited period of time after termination for Contractor's use for statistical purposes, if Contractor first deletes all information in the records from which the identity of a claimant or employee could be determined and certifies to the Department that all personal identifiers have been removed from the retained files.

22.0 CONFIDENTIAL INFORMATION AND HIPAA BUSINESS ASSOCIATE AGREEMENT: This Section is intended to cover handling of Confidential Information under state and federal law, and specifically to comply with the requirements of HIPAA, HITECH, and the Genetic Information Nondiscrimination Act (GINA) and the federal implementing regulations for those statutes requiring a written agreement with business associates.

(a) DEFINITIONS: As used in this Section, unless the context otherwise requires:

- (1) Business Associate. "Business Associate" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Contractor (insert name of Contractor).
- (2) Confidential Information has the meaning ascribed to it in Section 1.5 of the RFP.
- (3) Covered Entity. "Covered Entity" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Department of Employee Trust Funds.
- (4) HIPAA Rules. "HIPAA Rules" mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (5) Individual Personal Information "Individual Personal Information" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.70 (1).
- (6) Medical Record. "Medical Record" has the meaning ascribed to it at Wis. Admin. Code ETF 10.01 (3m).

(b) PROVISION OF CONFIDENTIAL INFORMATION FOR CONTRACTED SERVICES: ETF, a different business associate of ETF or a contractor performing Services for ETF may provide Confidential Information to the Contractor under this Contract as the Department determines is necessary for the proper administration of this Contract, as provided by Wis. Stat. § 40.07 (1m) (d) and (3).

(c) DUTY TO SAFEGUARD CONFIDENTIAL INFORMATION: The Contractor shall safeguard Confidential Information supplied to the Contractor or its employees under this Contract. In addition, the Contractor will only share Confidential Information with its employees on a need-to-know basis. Should the Contractor fail to properly protect Confidential Information, any cost the Department pays to mitigate the failure will be subtracted from the Contractor's invoice(s).

(d) USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION: Contractor shall:

- (1) Not use or disclose Confidential Information for any purpose other than as permitted or required by this Contract or as required by law. Contractor shall not use or disclose member names, addresses, or other data for any purpose other than specifically provided for in this Contract;
- (2) Make uses and disclosures and requests for any Confidential Information following the minimum necessary standard in the HIPAA Rules;
- (3) Use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by this Contract, and with respect to Protected Health Information, comply with Subpart C of 45 CFR Part 164;
- (4) Not use or disclose Confidential Information in a manner that would violate Subpart E of 45 CFR Part 164 or Wis. Stat. § 40.07 if done by ETF; and
- (5) If applicable, be allowed to use or disclose Confidential Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been or is suspected of being breached.

(e) COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS: The Contractor shall comply with each applicable requirements of 45 C.F.R. Part 162 if the Contractor conducts standard transactions, as that term is defined in HIPAA, for or on behalf of ETF.

- (f) **MANDATORY REPORTING:** Contractor shall report to ETF in the manner set forth in Subsection (l) any use or disclosure or suspected use or disclosure of Confidential Information not provided for by this Contract, of which it becomes aware, including breaches or suspected breaches of unsecured Protected Health Information as required at 45 CFR 164.410.
- (g) **DESIGNATED RECORD SET:** Contractor shall make available Protected Health Information in a designated record set to the individual as necessary to satisfy ETF's obligations under 45 CFR 164.524.
- (h) **AMENDMENT IN DESIGNATED RECORD SET:** Contractor shall make any amendment to Protected Health Information in a designated record set as directed or agreed to by ETF pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy ETF's obligations under 45 CFR 164.526.
- (i) **ACCOUNTING OF DISCLOSURES:** Contractor shall maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy ETF's obligations under 45 CFR 164.528.
- (j) **COMPLIANCE WITH SUBPART E OF 45 CFR 164:** To the extent Contractor is to carry out one or more of ETF's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to a covered entity in the performance of such obligation; and
- (k) **INTERNAL PRACTICES:** Contractor shall make its internal practices, books, and records available to the Secretary of the United States Department of Labor for purposes of determining compliance with the HIPAA Rules.
- (l) **CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO ETF:**
 - (1) Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure, notify in writing the ETF Program Manager and Privacy Officer. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the ETF Program Manager and Privacy Officer to determine ETF's agency response. Sufficient details include, without limitation:
 - a. A list of any affected members (if available);
 - b. Information about the information included in the breach, impermissible use, or impermissible disclosure;
 - c. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
 - d. The date of the discovery by Contractor;
 - e. A list of the pro-active steps taken by Contractor and being taken to correct breach, impermissible use or impermissible disclosure; and
 - f. Contact information at Contractor for affected persons who contact ETF regarding the issue.
 - (2) Not less than one (1) business day before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, provide a copy of the planned communication to the ETF Program Manager and Privacy Officer.
 - (3) Within thirty (30) days after Contractor makes the initial report under this section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure Confidential Information and provide a report in writing to the ETF Program Manager. The report must contain, at a minimum:
 - a. A complete list of any affected members and contact information;
 - b. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
 - c. Whether Contractor's Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
 - d. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
 - e. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
 - f. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.
- (m) **CLASSIFICATION LABELS:** Contractor shall ensure that all data classification labels contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed by the Department.

- (n) **SUBCONTRACTORS:** If applicable, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit Confidential Information on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
- (o) **NOTICE OF LEGAL PROCEEDINGS:** If Contractor or any of its employees, agents, or subcontractors is legally required in any administrative, regulatory or judicial proceeding to disclose any Confidential Information, contractor shall give the Department prompt notice (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.
- (p) **MITIGATION:** The Contractor shall take immediate steps to mitigate any harmful effects of the suspected or actual unauthorized use, disclosure, or loss of any Confidential Information provided to Contractor under this Contract. The Contractor shall reasonably cooperate with the Department's efforts to comply with the breach notification requirements of HIPAA, to seek appropriate injunctive relief or otherwise prevent or curtail such suspected or actual unauthorized use, disclosure or loss, or to recover its Confidential Information, including complying with a reasonable corrective action plan, as directed by the Department.
- (q) **COMPLIANCE REVIEWS:** The Department may conduct a compliance review of the Contractor's security procedures before and during this Contract term to protect Confidential Information.
- (r) **AMENDMENT:** The Parties agree to take such action as is necessary to amend the Contract as necessary for compliance with the HIPAA Rules and other applicable law.
- (s) **SURVIVAL:** The obligations of Contractor under this Section survive the termination of the underlying Contract.
- (t) **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:** Upon termination of this Contract for any reason, Contractor, with respect to Confidential Information received from ETF, another contractor of ETF, or created, maintained, or received by Contractor on behalf of ETF, shall:
 1. Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
 2. Return to ETF or, if agreed to by ETF, destroy the remaining Confidential Information that Contractor still maintains in any form;
 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;
 4. Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection (d) which applied prior to termination;
 5. Return to ETF or, if agreed to by ETF, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
 6. If required by ETF, transmit the Confidential Information to another contractor of ETF.

23.0 INDEMNIFICATION:

- 23.1 **SCOPE OF INDEMNIFICATION FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT:** In the event of a claim against the Parties for Intellectual Property Rights Infringement associated with a claim for benefits, Contractor agrees to defend, indemnify and hold harmless Board and Department ("Indemnified Parties") from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for Department's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office) reasonable attorneys' fees otherwise incurred by Board, Department and/or the Wisconsin Attorney General's Office, court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section.
- 23.2 **SCOPE OF OTHER INDEMNIFICATION:** In addition to the foregoing Section, Contractor shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for Department's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office) reasonable attorneys' fees otherwise incurred by Department and/or the Wisconsin Attorney General's Office, court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section, or liability arising from or in connection with the following: (a) Contractor's performance of or failure to perform any duties or obligations under any agreement

between Contractor and any third party; (b) injury to persons (including death or illness) or damage to property caused by the act or omission of Contractor or Contractor Personnel; (c) any claims or losses for Services rendered by any subcontractor, person, or firm performing or supplying Services, materials, or supplies in connection with the Contractor's performance of this Contract; (d) any claims or losses resulting to any person or third party entity injured or damaged by the Contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under this Contract in a manner not authorized by this Contract, or by Federal or State statutes or regulations; and (e) any failure of the Contractor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

23.3 INDEMNIFICATION NOTICE: Department shall give Contractor prompt written notice of such claim, suit, demand, or action (provided that a failure to give such prompt notice will not relieve Contractor of its indemnification obligations hereunder except to the extent Contractor can demonstrate actual, material prejudice to its ability to mount a defense as a result of such failure). Department will cooperate, assist, and consult with Contractor in the defense or investigation of any claim made or suit filed against Department resulting from Contractor's performance under the Contract.

23.4 NO INDEMNIFICATION OBLIGATIONS: Contractor shall as soon as practicable, notify Department of any claim made or suit filed against Contractor resulting from Contractor's obligations under this Contract if such claim may involve the Department. Department has no obligation to provide legal counsel or defense to Contractor if a suit, claim, or action is brought against Contractor or its subcontractors as a result of Contractor's performance of its obligations under this Contract. In addition, Department has no obligation for the payment of any judgments or the settlement of any claims against Contractor arising from or related to this Contract. Department has not waived any right or entitlement to claim sovereign immunity under this Contract.

23.5 CONTRACTOR'S DUTY TO INDEMNIFY: Contractor shall comply with its obligations to indemnify, defend and hold the Indemnified Parties harmless with regard to claims, damages, losses and/or expenses arising from a claim for benefits under the Plan as provided herein. Contractor shall be entitled to control the defense of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; however, Contractor shall consult with Department regarding its defense of any claim and not settle or compromise any claim or action in a manner that imposes restrictions or obligations on Department, requires any financial payment by Department, or grants rights or concessions to a third party without first obtaining Department's prior written consent. Contractor shall have the right to assert any and all defenses on behalf of the Indemnified parties, including sovereign immunity.

In carrying out any provision of this Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability upon the Department, it being understood that in such matters the Department acts as an agent of the State.

The Contractor shall at all times comply with and observe all federal and state laws and regulations which are in effect during the period of this Contract and which in any manner affect the work or its conduct.

24.0 EQUITABLE RELIEF: The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury shall not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the Department, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

25.0 RIGHT TO PUBLISH OR DISCLOSE: Throughout the term of this Contract, the Contractor must secure the Department's written approval prior to the release of any information which pertains to work or activities covered by this Contract.

The parties agree that it is a breach of this Contract to disclose any information to any person that the Department or its governing boards may not disclose under Wis. Stat. § 40.07. Contractor acknowledges that it will be liable for damage or injury to persons whose Confidential Information is disclosed by any officer, employee, agent, or subcontractor of the Contractor without proper authorization.

26.0 TIME IS OF THE ESSENCE: Timely provision of the Services required under this Contract shall be of the essence of the Contract, including the provisions of the Services within the time agreed or on a date specified herein.

27.0 IDENTIFICATION OF KEY PERSONNEL AND PERSONNEL CHANGES: The Department will designate a contract administrator, who shall have oversight for performance of the Department's obligations under this Contract. The Department shall not change the person designated without prior written notification to the Contractor.

The State of Wisconsin reserves the right to approve all individuals assigned to this project. The Contractor agrees to use its best effort to minimize personnel changes during the Contract term.

At the time of contract negotiations, the Contractor shall furnish the Department with names of all key personnel assigned to perform work under this Contract and furnish the Department with criminal background checks.

The Contractor will designate a contract administrator who shall have executive and administrative oversight for performance of the Contractor's obligations under this Contract. The Contractor shall not change this designation without prior written notice to the Department.

The Contractor may not divert key personnel for any period of time except in accordance with the procedure identified in this section. The Contractor shall provide a notice of proposed diversion or replacement to the single person of contact (SPOC) at least sixty (60) days in advance, together with the name and qualifications of the person(s) who will take the place of the diverted or replaced staff. At least thirty (30) days before the proposed diversion or replacement, the Department shall notify the SPOC whether the proposed diversion or replacement is approved or rejected, and if rejected shall provide reasons for the rejection. Such approval by the Department shall not be unreasonably withheld or delayed.

Replacement staff shall be on-site within two (2) weeks of the departure date of the person being replaced. The Contractor shall provide the Department with reasonable access to any staff diverted by the Contractor.

Replacement of key personnel shall be with persons of equal ability and qualifications. The Department has the right to conduct separate interviews of proposed replacements for key personnel. The Department shall have the right to approve, in writing, the replacement of key personnel. Such approval shall not be unreasonably withheld. Failure of the Contractor to promptly replace key personnel within thirty (30) Calendar Days after departure shall entitle the Department to terminate this Contract. The notice and justification must include identification of proposed substitute key personnel and must provide sufficient detail to permit evaluation of the impact of the change on the project and/or maintenance.

Any of the Contractor's staff that the Department deems unacceptable shall be promptly and without delay removed by the Contractor from the project and replaced by the Contractor within thirty (30) Calendar Days by another employee with acceptable experience and skills subject to the prior approval of the Department. Such approval by the Department will not be unreasonably withheld or delayed.

An unauthorized change by the Contractor of any Contracted Personnel designed as key personnel will result in the imposition of liquidated damages, as defined in this Contract.

28.0 DATA SECURITY AND PRIVACY AGREEMENT

(a) **PURPOSE AND SCOPE OF APPLICATION:** This Data Security and Privacy Agreement (Agreement) is designed to protect the Department of Employee Trust Fund's (ETF) Confidential Information and ETF Information Resources (defined below). This Agreement describes the data security and privacy obligations of Contractor and its sub-contractors that connect to ETF Information Resources and/or gain access to Confidential Information.

(b) DEFINED TERMS:

(1) **Confidential Information** means all tangible and intangible information and materials being disclosed in connection with the Contract, in any form or medium without regard to whether the information is owned by the State of Wisconsin or by a third party, which satisfies at least one of the following criteria: (i) Individual Personal Information; (ii) Protected Health Information under HIPAA, 45 CFR 160.103; (iii) proprietary information; (iv) non-public information related to the State of Wisconsin's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; (v) information expressly designated as confidential in writing by the State of Wisconsin; (vi) all information that is restricted or prohibited from disclosure by State or federal law, including Individual Personal Information and Medical Records as governed by Wis. Stat. § 40.07, Wis. Admin. Code ETF 10.70(1) and 10.01(3m); or (vii) any material submitted by the Proposer in response to this RFP that the Proposer designates confidential and proprietary information and which qualifies as a trade secret, as provided in Wis. Stat. § 19.36 (5) or material which can be kept confidential under the Wisconsin public records law, and identified by Contractor on FORM D –Designation of Confidential and Proprietary Information (DOA-3027). Pricing information cannot be held confidential.

(2) **ETF Information Resources** means those devices, networks and related infrastructure that ETF has obtained for use to conduct ETF business. Devices include but are not limited to, ETF-owned, managed, used through service agreements storage, processing, communications devices and related infrastructure on which ETF data is accessed, processed, stored, or communicated, and may include

personally owned devices. Data includes, but is not limited to, Confidential Information, other ETF created or managed business and research data, metadata, and credentials created by or issued on behalf of ETF.

- (c) **ACCESS TO ETF INFORMATION RESOURCES:** In any circumstance when Contractor is provided access to ETF Information Resources, it is solely Contractor's responsibility to ensure that its access does not result in any access by unauthorized individuals to ETF Information Resources. Contractors who access ETF's systems from any ETF location must at a minimum conform with ETF security standards that are in effect at the ETF location(s) where the access is provided. Any Contractor technology and/or systems that gain access to ETF Information Resources must comply with, at a minimum, the elements in the Computer System Security Requirements set forth in this Agreement.
- (d) **COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees to comply with all applicable state and federal laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Confidential Information.
- (e) **PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor agrees to hold ETF's Confidential Information, and any information derived from such information, in strictest confidence. Contractor will not access, use or disclose Confidential Information other than to carry out the purposes for which ETF disclosed the Confidential Information to Contractor, except as permitted or required by applicable law, or as otherwise authorized in writing by ETF. For avoidance of doubt, this provision prohibits Contractor from using for its own benefit Confidential Information or any information derived from such information. If required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Contractor will notify ETF in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give ETF an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so).
- (f) **REQUIREMENT TO KEEP CONFIDENTIAL INFORMATION WITHIN THE UNITED STATES:** The Contractor's transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except on prior written authorization by ETF.
- (g) **SAFEGUARD STANDARD:** Contractor agrees to protect the privacy and security of Confidential Information according to all applicable laws and regulations, including HIPAA, by commercially-acceptable frameworks or standards such as the ISO/IEC 27000-series, NIST, 800-53, RFC 2196, IEC 62443, and SANS CIS Top 20. ISO 270001, etc. Security Controls, and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Contractor will implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Confidential Information. All Confidential Information stored on portable devices or media must be encrypted in accordance with the Federal Information Processing Standards (FIPS) Publication 140-2. Contractor will ensure that all security measures are regularly reviewed including ongoing monitoring, an annual penetration and vulnerability test, and an annual security incident response test, and revised, no less than annually, to address evolving threats and vulnerabilities while Contractor has responsibility for the Confidential Information under the terms of this Agreement. Prior to agreeing to the terms of this Agreement, and periodically thereafter (no more frequently than annually) at ETF's request, Contractor will provide assurance, in the form of a third-party audit report or other documentation acceptable to ETF, such as SOC2 Type II, demonstrating that appropriate information security safeguards and controls are in place.
- (h) **INFORMATION SECURITY PLAN:**
 - (1) Contractor acknowledges that ETF is required to comply with information security standards for the protection of Confidential Information as required by law, regulation and regulatory guidance, as well as ETF's internal security program for information and systems protection.
 - (2) Contractor will establish, maintain and comply with an information security plan (Information Security Plan), which will contain, at a minimum, such elements as those set forth in this Agreement.
 - (3) Contractor's Information Security Plan will be designed to:
 - a. Ensure the privacy, security, integrity, availability, and confidentiality of Confidential Information;
 - b. Protect against any anticipated threats or hazards to the security or integrity of such information;
 - c. Protect against unauthorized access to or use of such information that could result in harm or inconvenience to the person that is the subject of such information;
 - d. Reduce risks associated with Contractor having access to ETF Information Resources; and
 - e. Comply with all applicable legal and regulatory requirements for data protection.

- (4) On at least an annual basis, Contractor will review its Information Security Plan, update and revise it as needed, and submit it to ETF upon request. At ETF's request, Contractor will make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to ETF's security requirements as they exist from time to time. If there are any significant modifications to Contractor's Information Security Plan, Contractor will notify ETF within a reasonable period of time, not to exceed two weeks. Any significant modification must include the same or a higher framework or information security standard maturity level than what currently exists in the Plan.

(i) RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:

Upon termination of this Contract for any reason, Contractor, with respect to Confidential Information received from ETF, another contractor of ETF, or created, maintained, or received by Contractor on behalf of ETF, shall:

- (1) Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
- (2) Where feasible, return to ETF, or, if agreed to by ETF, destroy the remaining Confidential Information that Contractor still maintains in any form;
- (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;
- (4) Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection (d) which applied prior to termination;
- (5) Return to ETF or, if agreed to by ETF, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
- (6) If required by ETF, transmit the Confidential Information to another contractor of ETF.

- (j) NOTIFICATION OF CORRESPONDENCE CONCERNING CONFIDENTIAL INFORMATION:** Contractor agrees to notify ETF immediately, both orally and in writing, but in no event more than twenty-four (24) hours after Contractor receives correspondence or a complaint regarding Confidential Information, including but not limited to, correspondence or a complaint that originates from a regulatory agency or an individual.

(k) BREACHES OF CONFIDENTIAL INFORMATION:

CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO ETF:

- (1) Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure of ETF's Confidential Information, notify in writing the ETF Program Manager and Privacy Officer. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the ETF Program Manager and Privacy Officer to determine ETF's agency response. Sufficient details include, without limitation:
 - a. The nature of the unauthorized access, use or disclosure;
 - b. A list of any affected members (if available);
 - c. Information about the information included in the breach, impermissible use, or impermissible disclosure;
 - d. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
 - e. The date of the discovery by Contractor;
 - f. A list of the pro-active steps taken by Contractor and being taken to correct breach, impermissible use or impermissible disclosure; and
 - g. Contact information at Contractor for affected persons who contact ETF regarding the issue.
- (2) Not less than twenty-four (24) hours before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, provide a copy of the planned communication to the ETF Program Manager and Privacy Officer.
- (3) Within thirty (30) days after Contractor makes the initial report under this section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure Confidential Information and provide a report in writing to the ETF Program Manager. The report must contain, at a minimum:
 - a. A complete list of any affected members and contact information;

- b. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
- c. Whether Contractor's Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
- d. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
- e. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
- f. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.

COORDINATION OF BREACH RESPONSE ACTIVITIES:

- (4) Contractor will fully cooperate with ETF's investigation of any breach involving Contractor, including but not limited to making witnesses, documents, HIPAA logs, systems logs, video recordings, or other pertinent or useful information available immediately upon Contractor's reporting of the breach and throughout the investigation. Contractor's full cooperation will include but not be limited to Contractor:
 - a. Immediately preserving any potential forensic evidence relating to the breach, and remedying the breach as quickly as circumstances permit
 - b. Within forty-eight (48) hours designating a contact person to whom ETF will direct inquiries, and who will communicate Contractor responses to ETF inquiries; Contractor will designate a Privacy Officer and Security Officer to serve as contacts for ETF.
 - c. As rapidly as circumstances permit, applying appropriate resources to remedy the breach condition, investigate, document, restore ETF service(s) as directed by ETF, and undertake appropriate response activities such as working with ETF, its representative, and law enforcement to identify the breach, identify the perpetrator(s), and take appropriate actions to remediate the security vulnerability;
 - d. Providing status reports at least every two (2) hours until the root cause of the breach is identified and a plan is devised to fully remediate the breach;
 - e. Once the root cause of the breach is identified and a plan is devised to fully remediate the breach, providing status reports daily or at mutually agreed upon timeframes, to ETF on breach response activities, findings, analyses, and conclusions;
 - f. Coordinating all media, law enforcement, or other breach notifications with ETF in advance of such notification(s), unless expressly prohibited by law; and
 - g. Ensuring that knowledgeable Contractor staff is available on short notice, if needed, to participate in ETF-initiated meetings and/or conference calls regarding the breach.

ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:

- (5) Contractor will make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations available to ETF at no cost to ETF to testify as witnesses, or otherwise, in the event of a breach or other unauthorized disclosure of Confidential Information caused by Contractor that results in litigation, governmental investigations, or administrative proceedings against ETF, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy or arising out of this Agreement or the Contract.

(I) RETENTION OF LOGS:

- a. HIPAA logs (logs of any systems that have information relating to HIPAA) must be kept for six (6) years.
- b. Firewall logs must be kept for twelve (12) months.

- (m) **ADDITIONAL INSURANCE:** In addition to the insurance required under the Agreement, Contractor at its sole cost and expense will obtain, keep in force, and maintain an insurance policy (or policies) that provides coverage for privacy and data security breaches. This specific type of insurance is typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability. In some cases, Professional Liability policies may include some coverage for privacy and/or data breaches. Regardless of the type of policy in place, it needs to include coverage for reasonable costs in investigating and responding to privacy and/or data breaches with the following minimum limits unless ETF specifies otherwise: \$1,000,000 Each Occurrence and \$5,000,000 Aggregate.

(n) INFORMATION SECURITY PLAN REQUIREMENTS:

- (1) Contractor will develop, implement, and maintain a comprehensive Information Security Plan that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards. The safeguards contained in such program must be consistent with the safeguards for

protection of Confidential Information and information of a similar character set forth in any state or federal regulations by which the person who owns or licenses such information may be regulated.

- (2) Without limiting the generality of the foregoing, every comprehensive Information Security Plan will include, but not be limited to:
- a. Designating one or more employees to maintain the comprehensive Information Security Plan;
 - b. Identifying and assessing internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing Confidential Information and of ETF Information Resources, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to:
 - c. Ongoing employee (including temporary and contract employee) training;
 - d. Employee compliance with policies and procedures; and
 - e. Means, including Contractor staff, processes, and technology, for detecting information system intrusions, data breaches, and anomalous system behavior or activity, and for preventing security breaches, intrusions, or unauthorized access to information systems or networks.
 - f. Developing security policies for employees relating to the storage, access and transportation of records containing Confidential Information outside of business premises.
 - g. Imposing disciplinary measures for violations of the comprehensive Information Security Plan rules.
 - h. Preventing terminated employees from accessing records containing Confidential Information and/or ETF Information Resources.
 - i. Overseeing service providers, by:
 - Taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect such Confidential Information and ETF Information Resources consistent with all applicable laws and regulations; and
 - Requiring such third-party service providers by contract to implement and maintain such appropriate security measures for Confidential Information.
 - j. Placing reasonable restrictions upon physical access to records containing Confidential Information and ETF Information Resources and requiring storage of such records and data in locked facilities, storage areas or containers.
 - k. Restrict physical access to any network or data centers that may have access to Confidential Information or ETF Information Resources.
 - l. Requiring regular monitoring to ensure that the comprehensive Information Security Plan is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Confidential Information and ETF Information Resources; and upgrading information safeguards as necessary to limit risks.
 - m. Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing Confidential Information and of ETF Information Resources.
 - n. Documenting responsive actions taken in connection with any incident involving a breach, and mandating post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of Confidential Information and ETF Information Resources.
- (o) **COMPUTER SYSTEM SECURITY REQUIREMENTS:** To the extent that Contractor electronically stores or transmits Confidential Information or has access to any ETF Information Resources, it will include in its written, comprehensive Information Security Plan the establishment and maintenance of a security system covering its computers, including any wireless system, that, at a minimum, and to the extent technically feasible, will have the following elements:
- (1) Secure user authentication protocols including:
 - a. Control of user IDs and other identifiers;
 - b. A secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;
 - c. Multi-Factor Authentication (MFA);
 - c. Control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
 - d. Multi-factor authentication for system administrators and others with 'super-user' access rights;
 - e. Restricting access to active users and active user accounts only;
 - f. Blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system; and
 - g. Periodic review of user access, access rights and audit of user accounts.
 - (2) Secure access control measures that:
 - a. Restrict access to records and files containing Confidential Information and systems that may have access to ETF Information Resources to those who need such information to perform their job duties; and

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